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OFFICE OF PETITIONS

In re Application of  
Hiserodt  
Application No. 09/162,648,  
Filed: September 29, 1998  
Title: Cancer Immunotherapy Using  
Allostimulated Cells in a Multiple Sequential  
Implantation Strategy

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed December 2, 2005. In the alternative petitioner has requested the petition be treated under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is Dismissed.  
The petition to revive under 37 CFR 1.137(b) is Dismissed.

This above-identified application became abandoned for failure to file a response to a Notice to File Corrected Application Papers mailed on October 20, 2005. The Notice to File Corrected Application Papers set a non-extendable thirty (30) day period for reply. A reply was not received. This decision precedes the mailing of a Notice of Abandonment.

Petitioner states during the later part of October through November of 2005 that he suffered a series of medical maladies. Petitioner contends the request for an executed declaration and correction of the priority document within a non-extendable thirty (30) day reply period was unreasonable. Petitioner argues extensions under 37 CFR 1.136 (a)(1) accommodate professional, familial and health considerations. The departure from extendable reply period has caused a serious hardship for petitioner. Petitioner further insist that the purported defects could have been identified by the Office any time during the past six years.

Petitioner's argument has been considered but deemed unpersuasive. While it is unfortunate that petitioner's illness prevented timely response to the Notice to File Corrected Application Papers, the facts provided do not warrant the withdrawal of the holding of abandonment. Petitioner does not contend that he did not receive the Notice to File Corrected Application Papers or that he timely replied to the Office Action. Petitioner contends he needed additional time to reply to the Notice. Accordingly, petitioner does not dispute that the application is not abandoned. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions

merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. MPEP 711.03(c).

Further, the Office makes every effort to ensure that an application is in proper order before the mailing of the Notice of Allowance. However, sometimes defects are discovered and must be addressed prior to issuance of the patent.

### **Alternative Venue**

In the alternative, petitioner has requested the above petition be treated under 37 CFR 1.137(b).

Any request for reconsideration must be submitted within TWO (2) Months from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR §1.137(b)". This is **not** a final agency action within the meaning of 5 U.S.C. §704

A grantable petition under 37 CFR §1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR §1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR §1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

Petitioner has failed to meet item (1), further review of the record shows that the corrected drawings required by the Notice of Allowability mailed on April 21, 2005 have not been received. Accordingly, the application can not be revived without receipt of the corrected drawings.

As to item (3), there are insufficient funds to charge the \$750.00 petition to revive fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
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By facsimile:

(571) 273-8300

By delivery service:  
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Telephone inquiries concerning this matter should be directed to the undersigned at  
(571) 272-3215.

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